



TEXAS HIGHER EDUCATION COORDINATING BOARD

MAR 26 1998

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Opinion Committee

March 25, 1998

RQ-1111

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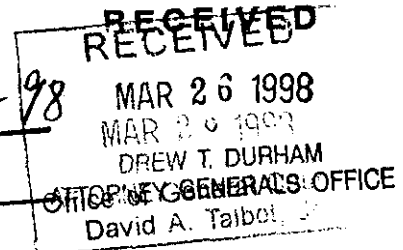
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The Honorable Dan Morales
Attorney General of Texas
209 W. 14th Street, 8th Floor
Austin, Texas 78701

Dear General Morales:

FILE # ML-40172-98
I.D. # 40172



On January 23, 1998, Texas A&M University ("University") entered into an exclusive affiliation agreement with The South Texas College of Law ("Law School"), a private law school operating in Houston, Texas. The agreement provides for the Law School to operate as the "South Texas College of Law of Texas A&M University" and for the Law School's premises to be called the "Texas A&M University Law Center." The agreement does not provide for the offering of a law degree by Texas A&M University, but creates an Operating Committee and Affiliation Committee to meet and discuss areas of mutual interest, including offering joint and combined degree programs.

The agreement further provides that the University's Board of Regents will designate six persons to be elected as members of the Law School's Board of Directors and will make recommendations regarding faculty candidates for tenure at the Law School. In addition, the president of the University will evaluate the performance of the Law School president and dean on a yearly basis, and will make recommendations regarding finalists for appointment to the position of president and dean of the Law School should the need arise. Other parts of the agreement provide for the sharing of resources and coordination of activities between the University and the Law School. A copy of the affiliation agreement is attached as Exhibit A.

Texas A&M University has not been approved or authorized by the Coordinating Board to include law in its mission and table of programs, to establish a law school, or to offer a degree program in law, and would have to obtain Coordinating Board approval prior to doing so. In addition, the affiliation agreement was not presented to the Coordinating Board for review and approval prior to its adoption. The Coordinating Board's authority with regard to the expansion of an institution's role and mission and the creation of new schools and degree programs is set out in Chapter 61 of the Texas Education Code. In general, the Coordinating Board is authorized to review and approve an institution's role and mission and table of degree and certificate programs to ensure that they meet the present and future needs of the state and the counties where the institution is located [TEC 61.051]. Also, the Coordinating Board must approve the addition of a new department, school, degree program, or certificate program at any public institution of higher education [TEC 61.051].

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In addition to the above statutory authority, Governor George W. Bush, Lieutenant Governor Bob Bullock and Speaker of the House Pete Laney issued a joint press release on June 14, 1995, declaring that any changes or improvements to the state's higher education system should be presented to the Coordinating Board for consideration and approval. A copy of the press release is attached as Exhibit B.

The University and the Law School unsuccessfully have asked the Coordinating Board to approve a merger in the past. In January 1969, the Coordinating Board heard a proposal by the Law School to join The Texas A&M University System. The Board reconvened on February 10, 1969, at which time it denied the Law School's request. The Board also voted down a motion to "encourage a merger of the South Texas College of Law with the University of Houston." A copy of the February 1969 Coordinating Board meeting minutes is attached as Exhibit C.

In September 1972, the Coordinating Board appointed an Advisory Committee on Legal Education to study the need for additional public law schools in Texas. The Advisory Committee, chaired by Leon Jaworski, presented its report to the Coordinating Board on March 2, 1973, and recommended that no new law schools be established in Texas, and that pending proposals for law schools from Texas A&M University, The University of Texas at Dallas and North Texas State University be denied. The Board adopted the committee's recommendation and denied all three proposals for new law schools. A copy of the March 1973 Coordinating Board meeting minutes is attached as Exhibit D.

Since the affiliation agreement was executed, the Law School has been advertising itself as both the Texas A&M University Law Center and the South Texas College of Law of Texas A&M University (see Exhibit E). This fact raises the question of whether the public is being misinformed as to the nature and status of the relationship between the University and the Law School. It also raises the question of whether a public benefit, the name of Texas A&M University, is being granted to a private entity in violation of Article III, Section 51 of the Texas Constitution.

In light of the above-cited legal authority and history, I respectfully request your opinion responding to the following questions:

1. Given that Texas A&M University has not been approved or authorized by the Coordinating Board to include law in its mission and table of programs, to establish a law school, or to offer a degree program in law, does Texas A&M University have the authority to enter into an affiliation agreement with the South Texas College of Law to establish the South Texas College of Law of Texas A&M University without the approval of the Coordinating Board or the Legislature?

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2. If the answer to Question 1 above is "no", what is the status of the affiliation agreement between the University and the Law School?

A committee of the Coordinating Board is scheduled to conduct a hearing and meeting on May 5, 1998, to discuss expanding Texas A&M University's mission and table of programs to include a program in law and a law school. Any guidance you can provide us prior to that date will be appreciated. Thank you for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Rauch", written in a cursive style.

Leonard Rauch

Attachments

cc: Sarah Shirley, Chair, Attorney General's Opinion Committee
Don Powell, Chairman, Texas A&M University Board of Regents
Coordinating Board members
Don W. Brown